

**House File 2204 - Introduced**

HOUSE FILE 2204

BY NUNN

**A BILL FOR**

1 An Act prohibiting the sale of ivory and rhinoceros horn with  
2 certain exceptions, providing penalties, and including  
3 effective date provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 455A.4, subsection 1, Code 2016, is  
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *k.* Issue a permit for the purchase, sale,  
4 offering for sale, or possession with the intent to sell ivory  
5 or rhinoceros horn pursuant to chapter 481D.

6 Sec. 2. NEW SECTION. **481D.1 Definitions.**

7 As used in this chapter unless the context otherwise  
8 requires:

9 1. "*Bona fide educational or scientific institution*" means  
10 an institution that qualifies under section 501(c)(3) of  
11 the Internal Revenue Code as an educational or scientific  
12 organization exempt from federal income tax under section  
13 501(a) of the Internal Revenue Code or, if located outside the  
14 United States, that qualifies for a similar tax exemption from  
15 the institution's national tax authority.

16 2. "*Commission*" means the natural resource commission  
17 created under section 455A.5.

18 3. "*Department*" means the department of natural resources  
19 created under section 455A.2.

20 4. "*Ivory*" means the tooth or tusk from a species of  
21 wildlife including but not limited to all species of elephant,  
22 hippopotamus, mammoth, walrus, whale, and narwhal, or a piece  
23 thereof, whether raw ivory or worked ivory, and includes a  
24 product containing or advertised as containing ivory.

25 5. "*Person*" means as defined in section 4.1.

26 6. "*Rhinoceros horn*" means the horn, or a piece or  
27 derivative thereof, of a species of rhinoceros, and includes a  
28 product containing or advertised as containing rhinoceros horn.

29 7. "*Sale*" or "*sell*" means an act of selling, trading,  
30 or bartering for monetary or nonmonetary consideration, and  
31 includes any transfer of ownership that occurs in the course of  
32 a commercial transaction, but does not include a nonmonetary  
33 transfer of ownership by way of gift, donation, or bequest.

34 8. "*Total value*" means the fair market value of or actual  
35 price paid for an item, whichever is greater.

1     Sec. 3. NEW SECTION.   **481D.2 Sale of ivory and rhinoceros**  
2 **horn prohibited.**

3     Except as provided in sections 481D.3 and 481D.4, a person  
4 shall not purchase, sell, offer for sale, or possess with the  
5 intent to sell ivory or rhinoceros horn.

6     Sec. 4. NEW SECTION.   **481D.3 Exceptions.**

7     The prohibition established in section 481D.2 shall not  
8 apply to any of the following:

9     1. An employee or agent of the federal or state government  
10 undertaking law enforcement activities pursuant to federal or  
11 state law, or any mandatory duties required by federal or state  
12 law.

13    2. An activity expressly authorized by federal law.

14    3. Ivory or rhinoceros horn that is a fixed component  
15 of an antique that is not made wholly or primarily of the  
16 ivory or rhinoceros horn, provided that the antique status is  
17 established by the owner or seller thereof with documentation  
18 evidencing provenance and showing that the ivory or rhinoceros  
19 horn is at least one hundred years old, and provided that  
20 the ivory or rhinoceros horn constitutes no more than twenty  
21 percent by volume of such antique.

22    4. Ivory or rhinoceros horn that is a fixed component of  
23 a musical instrument, including but not limited to string  
24 instruments and bows, wind and percussion instruments, and  
25 pianos, provided that the ivory or rhinoceros horn was legally  
26 acquired, with documentation evidencing such acquisition, and  
27 provided that the total weight of the ivory or rhinoceros horn  
28 is less than two hundred grams.

29    Sec. 5. NEW SECTION.   **481D.4 Permit for educational or**  
30 **scientific purpose.**

31    Unless prohibited by federal law, rule, or regulation,  
32 the department may issue a permit for the purchase, sale,  
33 offering for sale, or possession with the intent to sell ivory  
34 or rhinoceros horn to a bona fide educational or scientific  
35 institution for an educational or scientific purpose, provided

1 that the ivory or rhinoceros horn was legally acquired, with  
2 documentation evidencing such acquisition.

3     Sec. 6. NEW SECTION. 481D.5 **Presumption of possession with**  
4 **intent to sell.**

5     The possession of ivory or rhinoceros horn by a retailer  
6 or wholesale establishment or other establishment engaged  
7 in the business of purchasing or selling similar items  
8 creates a rebuttable presumption that the retailer, wholesale  
9 establishment, or other establishment possesses such ivory  
10 or rhinoceros horn with an intent to sell. The rebuttable  
11 presumption shall not preclude a finding of possession with  
12 the intent to sell upon the discovery of other evidence which  
13 independently establishes such intent.

14     Sec. 7. NEW SECTION. 481D.6 **Penalties.**

15     1. A person who violates a provision of this chapter or a  
16 rule adopted under this chapter is guilty of a public offense  
17 and shall be punished as follows:

18     *a.* The person, upon conviction of a first offense where  
19 the total value of the ivory or rhinoceros horn involved is  
20 two hundred fifty dollars or less, is guilty of a simple  
21 misdemeanor.

22     *b.* The person, upon conviction of a first offense where  
23 the total value of the ivory or rhinoceros horn involved is  
24 more than two hundred fifty dollars, is guilty of a serious  
25 misdemeanor.

26     *c.* The person, upon conviction of a second or subsequent  
27 offense where the total value of the ivory or rhinoceros horn  
28 involved is two hundred fifty dollars or less, is guilty of a  
29 serious misdemeanor.

30     *d.* The person, upon conviction of a second or subsequent  
31 offense where the total value of the ivory or rhinoceros horn  
32 involved is more than two hundred fifty dollars, is guilty of  
33 an aggravated misdemeanor.

34     2. Notwithstanding subsection 1, the department may subject  
35 a person who violates a provision of this chapter or a rule

1 adopted under this chapter to a civil penalty not to exceed two  
2 times the total value of the ivory or rhinoceros horn involved.

3      Sec. 8.   NEW SECTION.   481D.7   Reward for information.

4 For a conviction or other entry of judgment for a violation  
5 of this chapter that results in imposition of a civil penalty,  
6 one-half of the amount of such civil penalty, but not to exceed  
7 five hundred dollars, shall be paid to a person or persons who  
8 gave information leading to the conviction or other entry of  
9 judgment, provided, however, that such reward shall not apply  
10 if the person is a law enforcement officer or officer or agent  
11 of the department.

12       Sec. 9. NEW SECTION.   481D.8   Disposition of seized ivory or  
13 rhinoceros horn.

14       Upon conviction or other entry of judgment for a violation  
15 of this chapter, seized ivory or rhinoceros horn shall be  
16 forfeited and, upon forfeiture, either maintained by the  
17 department for educational or training purposes, donated  
18 by the department to a bona fide educational or scientific  
19 institution, or destroyed.

20      Sec. 10.    NEW SECTION.    481D.9    Rules.

21 The commission may adopt rules as are necessary to carry out  
22 this chapter.

23       Sec. 11. EFFECTIVE DATE. This Act takes effect January 1,  
24 2017.

25	EXPLANATION
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26 The inclusion of this explanation does not constitute agreement with  
27 the explanation's substance by the members of the general assembly.

28       This bill prohibits the sale of ivory and rhinoceros horn  
29 with exceptions.

30 The bill prohibits a person from purchasing, selling,  
31 offering for sale, or possessing with the intent to sell  
32 ivory or rhinoceros horn as defined in the bill. However,  
33 this prohibition does not apply to an employee or agent of  
34 the federal or state government undertaking law enforcement  
35 activities pursuant to law, an activity expressly authorized by

1 federal law, ivory or rhinoceros horn that is a fixed component  
2 of an antique as described in the bill, or ivory or rhinoceros  
3 horn that is a fixed component of a musical instrument as  
4 described in the bill.

5 The bill provides that the department of natural resources  
6 (DNR) may issue permits for the sale of ivory or rhinoceros  
7 horn to bona fide educational or scientific institutions for  
8 educational or scientific purposes if the ivory or rhinoceros  
9 horn was legally acquired.

10 The bill provides that the possession of ivory or rhinoceros  
11 horn by a retailer, wholesale establishment, or other  
12 establishment engaged in the business of buying or selling  
13 similar items creates a rebuttable presumption that such  
14 retailer or establishment possesses the ivory or rhinoceros  
15 horn with an intent to sell.

16 The bill provides that a person convicted of a first  
17 offense under the bill where the total value of the ivory  
18 or rhinoceros horn involved is \$250 or less is guilty of a  
19 simple misdemeanor. A simple misdemeanor is punishable by  
20 confinement for no more than 30 days or a fine of at least \$65  
21 but not more than \$625 or by both. A person convicted of a  
22 first offense under the bill where the total value of the ivory  
23 or rhinoceros horn involved is more than \$250 is guilty of a  
24 serious misdemeanor. A serious misdemeanor is punishable by  
25 confinement for no more than one year and a fine of at least  
26 \$315 but not more than \$1,875. A person convicted of a second  
27 or subsequent offense under the bill where the total value of  
28 the ivory or rhinoceros horn involved is less than \$250 is  
29 also guilty of a serious misdemeanor. A person convicted of  
30 a second or subsequent offense under the bill where the total  
31 value of the ivory or rhinoceros horn involved is more than  
32 \$250 is guilty of an aggravated misdemeanor. An aggravated  
33 misdemeanor is punishable by confinement for no more than two  
34 years and a fine of at least \$625 but not more than \$6,250.

35 The bill provides that for a conviction that results in a

1 civil penalty, half of the civil penalty amount, but not to  
2 exceed \$500, is to be paid as a reward to a person who gave  
3 information leading to the conviction. However, this reward  
4 does not apply to law enforcement officers or agents of the  
5 DNR.

6 The bill provides that ivory or rhinoceros horn seized upon  
7 a conviction is forfeited and will either be maintained by the  
8 DNR for educational or training purposes, donated to a bona  
9 fide educational or scientific institution, or destroyed.

10 The bill provides that the natural resource commission may  
11 adopt rules to carry out the provisions of the bill.

12 The bill takes effect January 1, 2017.